

TERMS & CONDITIONS/USER LICENSE AGREEMENT

BESPOKE ATELIER APP AND WEBSITE

Effective Date: May 1st, 2014

Last Modified: May 1st, 2014

www.bespoke-app.com

INTRODUCTION – Welcome to Our Site’s and App’s Terms & Conditions and User License Agreement (hereinafter “Agreement” or “Terms and Conditions.”) The provisions of this Agreement will govern Your use of Our Bespoke Atelier App (the “App”) and the Bespoke Atelier App Website (the “Site” or “Website”) (collectively, “Services”), and You should therefore take some time to read the Agreement carefully.

We hope that You thoroughly enjoy Our Services, and We anticipate that You will find the App informative and valuable to use. The Services are offered for entertainment purposes only. Should You have any questions or comments regarding Our Services, or the policies governing the Services, please feel free to contact Us via info@bespoke-app.com. The laws of Your individual city, county, state, province or nation may regulate the activities made available by the Services. Check your local laws before taking part in any such activities.

1. PRELIMINARY PROVISIONS

1.1. Party Definitions: The operative parties referred to in this Agreement are defined as follows:

1.1.1. Middlebrow Media, LLC is the operator of the above listed Site and the App. Hereinafter, Middlebrow Media, LLC shall be referred to as “Company.” When first-person pronouns are used in this Agreement, (Us, We, Our, Ours, etc.) these provisions are referring to Company. Our Services, which include the Bespoke Atelier App and Website, may contain images and content, including but not limited to text, software, images, graphics, data, messages, or any other information, and any other website content owned, operated, licensed, or controlled by the Company (collectively, “Materials”), as well as information provided by You (“Your Content”) or other third parties.

1.1.2. You, the User - As the User of the Services, this Agreement will refer to the User as “You” or through any second-person pronouns, such as “Yours,” etc. Hereinafter, the User of the Services shall be referred to in applicable second-person pronouns. Users include persons who download or use the Services for free as well as those who purchase a license to use additional features that the Services may provide. You understand that to

use certain features of the Services, You may be required to enter personal information to pay for such features. You certify that you are over eighteen (18) years of age.

1.2. What this Agreement is: This Agreement is a legal contract between You and the Company. You should treat it as any other legal contract by reading its provisions carefully, as they will affect Your legal rights. By accessing the Services in any manner, whether downloading the App or using the associated Website, You are affirmatively agreeing to be bound by all of the terms contained in this Agreement. If You do not agree with all of the terms in this Agreement, You must cease all access and use of the Services provided by the Company. Nothing in this Agreement is intended to create any enforcement rights by third parties.

1.3. Consideration: Consideration for Your acquiescence to all of the provisions in this Agreement has been provided to You in the form of allowing You to use Our Services. You agree that such consideration is both adequate, and that it is received upon Your viewing or using any portion of any of the Services. You may be allowed to pay for additional features within the App or Services, however, all Users, whether paying for upgraded features or not, are bound by this Agreement.

1.4. Electronic Signatures / Assent Required:

1.4.1. Nobody is authorized to use the Services unless they have signed this Agreement. You manifest Your assent to this contractual Agreement by taking any act demonstrating Your assent thereto. Most likely, You have clicked or will click a button containing the words “I agree” or some similar syntax with regard to downloading the App or otherwise accessing the Services. You should understand that this has the same legal effect as You placing Your physical signature on any other legal contract. If You click any link, button, or other device provided to You in any part of Our Services’ interface, then you have legally agreed to all of these Terms and Conditions. Additionally, by using any of Our Services, including the App and Website, in any manner, including downloading the App, You understand and agree that We will consider such use as Your affirmation of Your complete and unconditional acceptance to all of the terms in this Agreement.

1.4.2. If You fail to sign this Agreement, You understand that You are an unauthorized user of the Services, despite any payments made by You. No act or omission by Us should be interpreted as a waiver of the requirement that You assent to this Agreement. If You fail to do so, You are still bound by the terms of this Agreement by virtue of Your viewing the Website or using any portion of the Services. However, if You fail to electronically

sign this Agreement, You stipulate to and agree to pay Us two hundred and fifty dollars (\$250) each time You access the Site as liquidated damages for unauthorized access and use, and You agree to pay all of Our costs and expenses, including Attorney's fees and costs, incurred in collecting this unauthorized access fee from You.

1.5. If You are seeking information regarding any illegal activities, please do not attempt to use the Services. You agree not to use the Services if doing so would violate the laws of Your state, province, or country.

1.6. Revisions to this Agreement:

1. From time to time, We may revise this Agreement. We reserve the right to do so, and You agree that We have this right. You agree that all modifications or changes to this Agreement are in force and enforceable immediately upon posting. Any updated or edited version supersedes any prior versions immediately upon posting, and the prior version is of no continuing legal effect unless the revised version specifically refers to the prior version and keeps the prior version or portions thereof in effect. To the extent any amendment of this Agreement is deemed ineffective or invalid by any court or arbitrator, the parties intend that the prior, effective version of this Agreement be considered valid and enforceable to the fullest extent.
2. We agree that if We change anything in this Agreement, We will change the "last modified" date at the top of this Agreement so that it is immediately obvious that We have updated the Agreement. You agree to periodically re-visit this web page, and to use the "refresh" button on Your browser when doing so. You agree to note the date of the last revision to this Agreement. If the "last modified" date remains unchanged from the last time You reviewed this Agreement, then You may presume that nothing in the Agreement has been changed since the last time You read it. If the "last modified" date has changed, then You can be certain that something in the Agreement has been changed, and that You need to re-review it in order to determine how Your rights and responsibilities may have been affected by the revisions.
3. Waiver – If You fail to periodically review this Agreement to determine if any of the terms have changed, You assume all responsibility for Your failure to do so and You agree that such failure amounts to Your affirmative waiver of Your right to review the amended terms. We are not responsible for Your neglect of Your legal rights.

7. **Incorporations by Reference.** Although this Agreement represents the primary terms and conditions of service for Our Services, additional guidelines and rules are hereby incorporated by reference. The document(s) which can be found on Our Website, and which are specifically incorporated herein by reference, and are therefore part and parcel of this Agreement are the following:

Our Privacy Policy

2. EXPLANATION OF ACCESS AND LICENSE

1. **Access and limited license.** All Users may access certain public areas of the Website and Services. You understand that all We are providing You is access to Our Services as We provide them from time to time, and You understand and agree that We may cease operating the Services, including ceasing operation of the App software, at any time and without notice or damage to You. You need to provide Your own access to the Internet, and any Internet access or other fees that You incur to access Our Services, including any fees paid to your mobile device manufacturer and carrier, are Your sole responsibility.
2. **User Accounts and Login Issues** – To access the Services, You may be asked to provide certain registration details or other information. In order to verify Your identity, some of this information may be personal, private or detailed. In connection with completing any registration forms, You agree to provide true, accurate, current and complete information about Yourself as prompted by the registration form or other account creation mechanism (such information being the "Registration Data"); and You further agree to maintain and promptly update the Registration Data to keep it true, accurate, current and complete at all times while You use the Services. While We use reasonable efforts to protect the personal information of others from inadvertent release or misappropriation, We are not responsible for the intentional or criminal acts of third parties such as hackers or “phishers.”
 - 2.1. **Alternate Logins** – We may enable You to access the Services via Your existing social networking services (“SNS”) account(s), such as via Facebook Connect. Should You choose to access the Services via such SNS account, You understand that You may be providing Us with additional information not otherwise needed to access the Services. Such information depends on how You have configured Your account with the SNS, and We have no control over how the SNS might publicize or access Your behavior with Our Services. You should make sure that You fully understand the way that the SNS interacts with Our Services before using an SNS option for logging into the Services. You further understand and agree that by using an SNS to access the Services, You authorize Us to access, store, and use Your information as allowed by the SNS for use with

the Services. In the event that Your SNS's terms conflict with this Agreement, this Agreement shall control.

- 2.2. You are entirely responsible for any and all activities conducted through Your account. You agree to notify Us immediately of any unauthorized use of Your password or accounts as well as of any other breach of security.

3. Fees for Using the App and Services:

- 3.1. As fully detailed below, all Users are granted a single-user license to access the Services, however, certain features of the Services may be limited to Users who pay a fee ("Paid Users").

- 3.2. Unless permitted by the features of the Services, You are not permitted to distribute any of Our Materials from Our Services.

- 3.3. We disclaim any and all liability arising from fraudulent use of the Services. If a User fraudulently obtains access to the Services, We may terminate access to the Services immediately and take all necessary and appropriate actions under applicable federal, state, and international laws.

- 3.4. **Fees** – The current fees, if any, to access certain features of the Services are disclosed within the App and/or at the marketplace where You downloaded the App.

- 3.4.1. You will have several options to choose from in becoming a Paid User. Some Paid Users may have access to certain features of the App and Services that other Paid Users do not have access to, such as customizations, ringtones, and other advanced features. You will continue to have the access for which you paid for as long as the Services are provided by Us.

- 3.4.2. We reserve the right to contract with a third party entity to process all payments. Such third party entity may impose additional terms and conditions governing its payment processing services. You are responsible for abiding by such stipulations, if applicable. We disclaim any liability in relation to Your violation of such stipulations. You are

responsible for any and all fees or penalties that are associated with any third party payment processor.

3.4.3. Portions of Our Services, including the App software, may be distributed by third parties via third party marketplaces such as the Apple App Store in iTunes. You agree that You are aware of and will abide by any additional terms and conditions imposed by any such third party distributor. It is Your responsibility to determine if such additional terms and conditions apply to Your download and use of the App. This Agreement is between You and Us; however, Apple contends, and You agree, that Apple is a third-party beneficiary to this Agreement should Apple seek to enforce this Agreement against You. Apple is not responsible for Your use of the Services, and Apple has no obligation to furnish any maintenance or support for the Services.

3.4.4. **Billing Errors** – If You believe that You have been erroneously billed, please notify Us of such error immediately. If You do not notify Us within thirty (30) days of the error having occurred, You will have deemed the alleged error as acceptable for all purposes, including resolution of any inquires made by or on behalf of Your banking institution.

3.4.5. You are responsible for any credit card charge backs and any related fees that We incur with respect to Your purchase of the Services. If You fail to reimburse Us for any credit card charge backs or related fees within thirty (30) days of Our initial demand for reimbursement, You agree that You will pay Us one hundred dollars (\$100) in additional liquidated damages for each fee incurred.

4. **Termination of Your Access to the App and Services.**

4.1. You may delete the App at any time should You no longer wish to use the Services. Such action by You shall be deemed an express termination of this Agreement and any license granted to You hereunder, subject to any license that You may have granted Us to Your Content and other data provided by You.

- 4.2. Without limiting other remedies, We may immediately issue a warning, temporarily suspend, indefinitely suspend, or terminate Your access and use of the Services at any time, with or without advance notice, if:
- 4.2.1. We believe, in Our sole discretion, that You have breached any material term of this Agreement or the document(s) it incorporates by reference;
 - 4.2.2. We are unable to verify or authenticate any information You provide to Us, including payment information;
 - 4.2.3. We believe, in Our sole discretion, that Your actions may cause legal liability for You, Our Users or Us; or
 - 4.2.4. We decide to cease operations or to otherwise discontinue any Services or parts thereof.
- 4.3. You agree that neither We nor any third party acting on Our behalf shall be liable to You for any termination of Your access to any part of the Services, including but not limited to if the Services, including the App software, cease operation.

5. Stolen Cards and Fraudulent Use of Credit Cards: We take credit card fraud very seriously. Discovery that any Paid User has used a stolen or fraudulent credit card or other payment method will result in the notification of the appropriate law enforcement agencies and termination of such User's account.

6. While using the Services, if You provide any information that is untrue, inaccurate, not current or incomplete, or if We or any of Our authorized agents have reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, We have the right to refuse any and all current or future use of the App and Services, as well as subjecting You to criminal and civil liability.

7. License: Subject to Your acceptance of this Agreement, We grant You a limited, nonexclusive, nontransferable personal license to access and use the Materials and the Services. This license is not a sale of the Services, and it includes the right to download and install the App to a single mobile device. Any rights to the App and Services not expressly granted to You are reserved by Us. Unless otherwise terminated by You due to Your deletion of the App, or otherwise terminated by Us under this Agreement, this license shall remain in effect for as long as We provide the Services to You and You use the Services. You agree that upon termination of this license for any reason that You will destroy any and all copies of the App and cease accessing the Services.

8. All Materials and Services shall be for private non-commercial use only, and all other uses are strictly prohibited, unless consented to by Us.
9. This is a license to use and access the Services for their intended purpose and is not a transfer of title. With the exception of Your Content as defined below, You will not copy or redistribute any of the content appearing in the App or otherwise available via the Services unless the App allows such distribution. We reserve the right to terminate this license at any time and with no notice to You if You breach or violate any provision of this Agreement.
10. **Service Interruption:** From time to time due to technological factors, scheduled software uploads, updates and other factors beyond Our control, service may be temporarily interrupted. From time to time certain features of the Services may not be available for use due to technological and other factors. You agree to hold Us harmless against any such interruption of service. Furthermore, We undertake no obligation to provide updates, upgrades, or other improvements to the Services, regardless of the ability of the Services to function on Your device(s).
11. **Agreement to Receive Notifications and Other Communications:** We reserve the right to send electronic mail or other messages to You, including “push” notifications and SMS messages to your mobile device. You understand and agree that even unsolicited commercial email or other messages sent from Us, Our affiliates, or those We contract with to bring You the Services, is not SPAM as that term is defined under the law. The purpose of this communication may include but is not limited to:
 - 11.1. Inform You of any change to Your Paid User status and/or any updates or issues with the Services;
 - 11.2. Provide information to You regarding products or services offered by Our affiliates or partners; or
 - 11.3. Inform You about any of Our related products or services.

3. SPECIAL CONSIDERATIONS REGARDING MINORS

- 3.1. **Age of Majority.** In order to use the Services, You must have attained the age of majority in Your jurisdiction. You represent and warrant You are at least eighteen (18) or twenty-one (21) years of age, depending on the age of majority in Your jurisdiction, and that You have the legal capacity to enter into this Agreement. If You are not at least eighteen (18) or twenty-one (21) years of age, depending on the age of

majority in Your jurisdiction, You must cease using the Services in any manner.

4. IMAGES AND CONTENT

- 4.1. Our Services contain images and content, including but not limited to text, software, images, graphics, data, messages, or any other information, owned, operated, licensed, or controlled by Us and as used with the Services (defined above as “Materials”). “Materials” does not include “Your Content,” as defined below. Our Services may also integrate or display certain third-party material (“Other Content”) based on Your and other Users’ use of the Services.
- 4.2. You acknowledge and stipulate that all of the Materials constitute expressive content that is fully protected by the First Amendment to the United States Constitution, including fair use principles.
- 4.3. You understand that all of the information, data, text, images, audio, graphics, messages, or any other content available via the Services, is the sole responsibility of the party from whom the content originated. This means that You are entirely responsible for any and all content that You upload, post, transmit, e-mail, message, or otherwise use in connection with Our Services (“Your Content”), including but not limited to any and all content You use in connection with the personalization features of the App and Services.
- 4.4. We are not responsible in any way for Your Content which You may use in connection with the App and Services, nor are we responsible for Other Content not provided by Us.
- 4.5. **License To Use Your Information and Content:** Absent any written agreement executed by Us to the contrary, and with the exception of personal financial and billing information, You hereby grant to Us the perpetual, unlimited, royalty-free, worldwide, non-exclusive, revocable, transferable license to run, display, copy, reproduce, publish, bundle, distribute, create derivative works of, and make available to use, any text, images, data, video or other information and content You provide for use with the Services. The purpose of this license is to use Your Content for the purpose you intend, namely, to be able to use Your own images in the personalization portions of the App. You understand and agree that by submitting Your Content to or via the App, Your Content may be visible for other App users and/or third parties to see. Depending on how You configure the App to work with Your other SNSs, Your Content may also appear on other such websites or services. We shall not be subject to any obligations of confidentiality regarding any such information unless specifically agreed by Us in writing or required by law.

- 4.5.1. By using Your Content with the Services, You hereby swear that You own or control via license all intellectual property and publicity rights with respect to the referenced content.
- 4.5.2. If Your Content depicts individuals other than Yourself, You hereby swear that the subject of Your Content understands and consents to Your use of such person's image and likeness in connection with the Services and that such person has licensed such rights to You.
- 4.6. **Additional Features:** As explained above, the Service may allow You to use certain SNSs, such as Twitter and Facebook, or, e-mail and SMS text, to inform persons of Your choosing about the Services or Your participation in the Services. At Your direction, the Services may access the address book on Your mobile device to present You with a list of contacts which You may wish to contact. You understand and agree that any promotion of the Services is done solely at Your discretion and that You will not receive anything of value from Us based on Your unilateral promotion of the Services. Any e-mail or text that You send from within the App originates from You, not Us.
- 4.6.1. By using such features, including any SNS integration or sending e-mail to Your address book contacts, You expressly give Us permission to access the required accounts and/or locations on Your device necessary for Us to assist You in promoting or otherwise informing Your third party contacts about the Services.
- 4.7. **Section 230 Notice:** You acknowledge Your responsibility to prevent minors under Your care from accessing harmful or inappropriate material. You agree not to allow minors to view any such content, and You agree to take responsible measures to prevent them from doing so. Numerous commercial online safety filters are available which may help users limit minors' access to harmful or inappropriate material. Pursuant to 47 U.S.C. §230(d), You are hereby informed that You can research such services at websites such as: www.getnetwise.org or http://www.child-internet-safety.com/internet_filters.php, among others. Please note that We make no representation or warranty regarding any of the products or services referenced on such sites, and We recommend that You conduct appropriate due diligence before purchasing or installing any online filter.
- 4.8. Pursuant to the Communications Decency Act ("CDA"), 47 U.S.C. § 230(c)(1), and court decisions interpreting the scope of the CDA, You acknowledge and understand that We operate as the provider of an interactive computer service. Thus, We are immune from, and cannot be held responsible for, claims arising from the publication or transmission of Your Content as well as the content of other Users and third parties. We do not create such content. Note, that federal law allows Us to

remove or block any content found to be offensive, defamatory, obscene or otherwise violative of Our policies, without impacting Our status as the provider of an interactive computer service. Nothing contained in this Agreement is intended to limit or alter the immunity from claims provided by Section 230 of the Communications Decency Act, and no third parties are intended to benefit from this Agreement between You and Us.

- 4.9. We respect the intellectual property rights of copyright holders, and thus voluntarily comply with the Notice and Takedown provisions of the Digital Millennium Copyright Act (“DMCA”). Our DMCA Notice and Takedown Policy is available via the App and the Site. Further, We have adopted a policy regarding termination of repeat copyright infringers under the DMCA. Copies of Our Repeat Infringer Policy are available to You upon request.

5. RESTRICTIONS AND REGULATIONS GOVERNING USE OF OUR APP AND SERVICES:

- 5.1. You agree that You will only use the Services for purposes expressly permitted and contemplated by this Agreement.
- 5.2. Without Our express prior written authorization, You may not:
- 5.2.1. Duplicate, distribute, display or create derivative works of any part of the Materials contained in or received via the Services (except as expressly provided elsewhere in this Agreement), and You hereby agree and stipulate that any and all such uses are NOT “fair use”;
 - 5.2.2. Remove any copyright or other proprietary notices from the Materials;
 - 5.2.3. Circumvent any encryption or other security tools used anywhere in conjunction with the Services, including attempting to reverse engineer the App software;
 - 5.2.4. Use Your Content in a way that may be viewed as defamatory, vulgar, threatening, unlawful, abusive, tortious, invasive of that person’s privacy, or racially, ethnically, or otherwise objectionable;
 - 5.2.5. Use Our Services to impersonate any other User or person;
 - 5.2.6. Utilize any obscene or otherwise unlawful content as part of Your Content;

5.2.7. Use as part of Your Content any images, photographs, software or other material protected by intellectual property laws, including, by way of example, and not as limitation, copyright or trademark laws (or by rights of privacy or publicity) unless You own or control the rights thereto or have received all necessary consents and licenses to do the same;

5.2.8. Violate any applicable laws, policies, or regulations;

5.3. **Interference.** Except where expressly permitted by law or by Us, You may not translate, reverse-engineer, decompile, disassemble, or make derivative works from any of Our Materials or any other materials available via the Services. User hereby agrees not to use any automatic device or manual process to monitor or reproduce the Services, Materials, App, or Website, and will not use any device, software, computer code, or virus to interfere or attempt to disrupt or damage the Services. If You do not adhere to this provision of this Agreement, You hereby stipulate to and agree to pay liquidated damages of five thousand dollars (\$5,000) plus any and all fees associated with recovery of these damages, including attorney's fees and costs.

6. STIPULATED LIQUIDATED DAMAGES:

6.1. In various provisions in this Agreement, We have outlined liquidated damages amounts to be applied as penalties against You if You violate these specific provisions. You specifically agree to pay these amounts. In agreeing to pay liquidated damages, You acknowledge that this amount is not a penalty, that the actual damages are uncertain and difficult to ascertain, but that this amount represents the parties' good faith attempt to calculate an appropriate compensation based on anticipated actual damages.

6.2. For any breach of a portion of this Agreement that does not specifically state a liquidated damages amount, You hereby agree that any breach of this Agreement shall result in liquidated damages of one hundred dollars (\$100) per occurrence. You specifically agree to pay this one hundred dollars (\$100) in liquidated damages.

7. DISCLAIMER OF WARRANTY:

7.1. **You expressly agree that use of the Services, or any of the software and Materials contained therein is at Your own and sole risk. You also understand and agree that any material and/or data downloaded or otherwise obtained through the use of the Services or any of the Materials contained therein is done at Your own discretion and risk and that You will be solely responsible for any damage to Your computer system or mobile device or loss of data that results from the download of such material and/or data.**

- 7.2. **The Services, and all materials contained and used with the Services, are provided “as is” without warranty of any kind, either express or implied, including but not limited to, any implied warranties of merchantability, fitness for a particular purpose, title, or non-infringement.**
- 7.3. **We make no representations or warranties that the Services, or any materials contained therein, will be uninterrupted, timely, secure, or error free; nor do We make any representations or warranties as to the quality, suitability, truth, usefulness, accuracy, or completeness of the Services or any of the materials contained therein.**
- 7.4. **You understand that We cannot and do not guarantee or warrant that files available for downloading from the Internet will be free of viruses, worms, Trojan horses, or other code that may manifest contaminating or destructive properties. We do not assume any responsibility or risk for Your use of the Internet or the marketplace where You obtain the App or otherwise use the Services.**
- 7.5. **We make no warranty regarding any goods or services purchased or obtained through Services or any transaction entered into through or because of the Services, and We are not responsible for any use of confidential or private information by sellers or third parties.**
- 7.6. **The warranties and representations set forth in this Agreement are the only warranties and representations with respect to this Agreement, and are in lieu of any and all other warranties, written or oral, express or implied, that may arise either by agreement between the parties or by operation of law, including warranties of merchantability and fitness for a particular purpose. None of these warranties and representations will extend to any third person.**
- 7.7. **To the extent that the App fails to perform as advertised, and subject to any warranty not disclaimed herein, You may be able to notify Apple, and Apple may refund the purchase price You paid to download the App. Note that Apple is not responsible for claims regarding the use of the App, including but not limited to (i) product liability claims; (ii) any claim that the App fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.**

8. DISCLAIMER AND INDEMNIFICATION:

- 8.1. **The provision of any services which are in violation of any laws is strictly prohibited. If We determine that You or any User has provided or intends to provide or use with the Services any material in violation of any law, Your ability to use the**

Services will be terminated immediately without any reimbursement of any payment You may have made to Us. We have every right to voluntarily cooperate with law enforcement or private aggrieved parties that We may be legally compelled to do so. We do hereby disclaim any liability for damages that may arise from any User providing or using any material for any purpose that violates any law. You do hereby agree to defend, indemnify and hold Us harmless from any liability that may arise for Us should You violate any law derived from Your actions both, on and off-line.

- 8.2. You also agree to defend and indemnify Us should any third party be harmed by Your illegal actions or should We be obligated to defend any claims including, without limitation, any criminal action brought by any party.
- 8.3. Given that Our user may upload content of their choosing, Our Services may contain material that may be offensive to third parties. You agree to indemnify and hold Us harmless from any liability that may arise from someone viewing such material and You agree to immediately cease use of the Services should You find them offensive.
- 8.4. You agree to defend, indemnify, and hold harmless Company, its officers, directors, shareholders, employees, independent contractors, telecommunication providers, and agents, from and against any and all claims, actions, loss, liabilities, expenses, costs, or demands, including without limitation, legal and accounting fees, for all damages directly, indirectly, and/or consequentially resulting or allegedly resulting from Your, or You under another person's authority including without limitation, governmental agencies, use, misuse, or inability to use the App, Services, or any of the Materials contained therein, or Your breach of any of this Agreement. We shall promptly notify You by electronic mail of any such claim or suit, and cooperate fully (at Your expense) in the defense of such claim or suit. We reserve the right to participate in the defense of such claim or defense at Our own expense, and choose Our own legal counsel, but are not obligated to do so.
- 8.5. You hereby discharge, acquit, and otherwise release Company, its parent company, its agents, employees, officers, directors, shareholders, attorneys, and affiliates, from any and all allegations, counts, charges, debts, causes of action, and claims relating in any way to the use of, or activities relating to the use of the Services, including claims related to Your Content as used with the Services, including but not limited to, claims relating to the following:
 - 8.5.1. Accomplice liability, conspiracy, aiding and abetting, sexual harassment, negligence, gross negligence, reckless conduct, alienation of affections (to the extent recognized in any jurisdiction), intentional infliction of emotional distress, intentional interference with contract or advantageous business relationship, defamation, privacy, publicity, intellectual property,

misrepresentation, any financial loss not due to the fault of the Site, missed meetings, unmet expectations, false identities, fraudulent acts by others, invasion of privacy, release of personal information, failed transactions, purchases or functionality of the Services, unavailability of the Services, functions and/or services and any other technical failure that may result in inaccessibility to the Services.

- 8.5.2. The above list is intended to be illustrative only, and not exhaustive of the types or categories of claims released by You. This release is intended by the parties to be interpreted broadly in favor of Us, and thus any ambiguity shall be interpreted in a manner providing release of the broadest claims. This release is intended to be a full release of claims, and the parties acknowledge the legally binding nature of this provision, and the nature of the rights given up in connection therewith. Nothing contained in this section is intended to limit the scope of releases and/or indemnification contained elsewhere in this Agreement

9. LIMITATION OF LIABILITY:

- 9.1. **In no event shall We (or Our licensors, agents, suppliers, resellers, service providers, or any other subscribers or suppliers) be liable to You, or any other third party for any direct, special, indirect, incidental, consequential, exemplary, or punitive damages, including without limitation, damages for loss of profits, loss of information, business interruption, revenue, or goodwill, which may arise from any person's use, misuse, or inability to use the Services, or any of the materials contained therein, even if We have been advised of the probability of such damages. This is for any matter arising out of or relating to this Agreement, whether such liability is asserted on the basis of contract, tort or otherwise, even if We have been advised of the possibility of such damages.**
- 9.2. In no event shall Our maximum total aggregate liability hereunder for direct damages exceed the total fees actually paid by You for use of the Services, or ten dollars (\$10.00), whichever is greater. Because some jurisdictions prohibit the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply to You.

10. LINKS AND LINKING:

- 10.1. Some websites which are linked to or from the Services, are owned and operated by third parties. Because We have no control over such websites and resources, You acknowledge and agree that We are not responsible or liable for the availability of such external websites or resources, and do not screen or endorse them, and are not

responsible or liable for any content, advertising, services, products, or other materials on or available from such websites or resources.

- 10.2. You further acknowledge and agree that We shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such third-party content, goods or services available on or through any such website or resource. If You decide to access any such third party website, You do so entirely at Your own risk and subject to any terms and conditions and privacy policies posted therein.
- 10.3. You further acknowledge that use of any website controlled, owned or operated by third parties is governed by the terms and conditions of use for those websites, and not by this Agreement or Our Privacy Policy, which is incorporated into this Agreement by reference.
- 10.4. Links to external websites or inclusions of advertisements do not necessarily constitute an endorsement by Us of such websites or the content, products, advertising, or other materials presented via the Services, but are for Your convenience.
- 10.5. You hereby agree to hold Us harmless from any and all damages and liability that may result from the use of links that may appear via the Services. We reserve the right to terminate any link or linking program at anytime.
- 10.6. Our Services enable You to choose and aggregate certain Other Content provided by third parties, and You are responsible for such aggregation.

11. TRADEMARK INFORMATION:

- 11.1. The name of the App, Bespoke Atelier, is considered a trademark owned by Us. We aggressively defend Our intellectual property rights.
- 11.2. Other manufacturers' product and service names referenced herein may be trademarks and service marks of their respective companies and are the exclusive property of such respective owners, and may not be used publicly without the express written consent of the owners and/or holders of such trademarks and service marks. Our use of such marks within the Services constitutes fair use.
- 11.3. The marks, logos, domains, and trademarks that You find via the Services may not be used publicly except with express written permission from Us, and may not be used in any manner that is likely to cause confusion among consumers, or in any manner that disparages or discredits Us.

12. COPYRIGHT INFORMATION:

- 12.1. The Materials accessible via the Services, including the App software and the Materials within the App and other Services, are Our proprietary information and valuable intellectual property, and We retain all right, title, and interest in the Materials.
- 12.2. You agree that modification or use of the Materials except as expressly provided in this Agreement violates Our intellectual property rights.
- 12.3. Neither title nor intellectual property rights are transferred to You by Your downloading, installing, and using the App and Services.
- 12.4. All Materials accessible via the Services, such as text, graphics, photographs, video and audio clips, music, soundtracks, button icons, streaming data, animation, images, downloadable materials, data compilations and software is the property of Company or its content suppliers and is protected by United States and international copyright laws and treaties. The compilation of all Materials on the Site is the exclusive property of Company or its content suppliers and protected by United States and international copyright laws, as well as other laws and regulations.
- 12.5. As stated herein, You retain ownership of Your Content, and You merely provide a license for Us to use Your Content. Other Content which may be presented in the App or Services remains the property and responsibility of the author and/or licensor of such Other Content.

13. EXPORT CONTROL:

- 13.1. You understand and acknowledge that the software elements of the Services may be subject to regulation by agencies of the United States Government, including the United States Department of Commerce, which prohibits export or diversion of software and other goods to certain countries and third parties. Diversion of such Materials contrary to United States' or international law is prohibited.
- 13.2. You will not assist or participate in any such diversion or other violation of applicable laws and regulations.
- 13.3. You warrant that You will not license or otherwise permit anyone not approved to receive controlled commodities under applicable laws and regulations and that You will abide by such laws and regulations. By using the Services, You further represent and warrant that (i) You are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a

“terrorist supporting” country; and (ii) You are not listed on any U.S. Government list of prohibited or restricted parties.

13.4. You agree that none of the Materials are being or will be acquired for, shipped, transferred, or re-exported, directly or indirectly, to proscribed or embargoed countries or their nationals or be used for proscribed activities.

14. **NO AGENCY RELATIONSHIP:** Nothing in this Agreement shall be deemed to constitute, create, imply, give effect to, or otherwise recognize a partnership, employment, joint venture, or formal business entity of any kind; and the rights and obligations of the parties shall be limited to those expressly set forth herein.

15. **NOTICE:**

15.1. **Notice.** Any notice required to be given under this Agreement may be provided by email to a functioning email address of the party to be noticed.

15.2. **When Notice is Effective.** Notices shall be deemed effective upon delivery. Notices by email are acceptable under this Agreement provided that they are delivered one (1) hour after transmission if sent during the recipient's business hours, or 9:00 a.m. (recipient's time) the next business day. Either party may, by giving the other party appropriate written notice, change the designated address for any notice or courtesy copy, hereunder.

15.3. **Refused, Unclaimed, or Undeliverable Notice.** Any correctly addressed notice that is refused, unclaimed, or undeliverable, because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused or deemed undeliverable by the postal authorities, messenger, facsimile machine, email server, or overnight delivery service.

16. **COMMUNICATIONS NOT PRIVATE:**

16.1. We do not provide any facility for sending or receiving private or confidential electronic communications. All messages transmitted to Us shall be deemed to be readily accessible to the general public. Notice is hereby given that all messages and other content entered into the Services can and may be read by the agents and operators of the Services, regardless of whether they are the intended recipients of such messages.

17. **FORCE MAJEURE:**

17.1. We shall not be responsible for any failure to perform due to unforeseen circumstances or to causes beyond Our reasonable control, including but not limited

to: acts of God, such as fire, flood, earthquakes, hurricanes, tropical storms or other natural disasters; war, riot, arson, embargoes, acts of civil or military authority, or terrorism; fiber cuts; strikes, or shortages in transportation, facilities, fuel, energy, labor or materials; failure of the telecommunications or information services infrastructure; hacking, SPAM, or any failure of a computer, server or software, for so long as such event continues to delay the Site's or Services' performance.

18. JURISDICTION/DISPUTES:

18.1. **Governing Law.** This Agreement and all matters arising out of, or otherwise relating to, this Agreement shall be governed by the laws of the State of New York, excluding its conflict of law provisions. The sum of this paragraph is that any and all litigation permitted under this Agreement must be, without exception, initiated in New York City, New York.

1. All parties to this Agreement agree that all litigation permitted under this Agreement shall be tried and/or litigated exclusively in the courts located in New York, New York.
2. The parties agree to exclusive jurisdiction in, and only in, New York, New York.
3. The parties agree to exclusive venue in, and only in, New York, New York.
4. The parties additionally agree that this choice of venue and forum is mandatory and not permissive in nature, thereby precluding any possibility of litigation between the parties with respect to, or arising out of, this Agreement in a jurisdiction other than that specified in this paragraph.
5. All parties hereby waive any right to assert the doctrine of *forum non-conveniens* or similar doctrines, or to object to venue with respect to any litigation permitted under this Agreement.
6. All parties stipulate that the courts located in New York, New York shall have personal jurisdiction over them for the purpose of any litigation permitted under this Agreement that is not otherwise subject to the arbitration provisions, *infra*.
7. Each party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it, as contemplated by this paragraph by registered or certified mail, Federal Express, proof of delivery or return

receipt requested, to the parties address for the giving of notices as set forth in this Agreement.

8. Any final judgment rendered against a party in any action or proceeding shall be conclusive as to the subject of such final judgment and may be enforced in other jurisdictions in any manner provided by law if such enforcement becomes necessary.
9. **Right to Injunctive Relief.** Both parties acknowledge that remedies at law may be inadequate to provide an aggrieved party with full compensation in the event of the other party's breach, and that in any litigation permitted under this Agreement, an aggrieved party shall therefore be entitled to seek injunctive relief, in addition to seeking all other remedies available at law or in equity.

19. ARBITRATION PROVISIONS:

1. If there is a dispute between the parties arising out of or otherwise relating to this Agreement, the parties shall meet and negotiate in good faith to attempt to resolve the dispute. If the parties are unable to resolve the dispute through direct negotiations, then, except as otherwise provided herein, either party must submit the issue to binding arbitration in accordance with the rules governing arbitration promulgated by the American Arbitration Association. Arbitral Claims shall include, but are not limited to, contract and tort claims of all kinds, and all claims based on any federal, state or local law, statute, or regulation, excepting only claims by Us under applicable worker's compensation law, unemployment insurance claims, intellectual property claims, actions for injunctions, attachment, garnishment, and other equitable relief. The arbitration shall be conducted in New York, New York and conducted by a single arbitrator, knowledgeable in Internet and e-Commerce disputes. The arbitrator shall be willing to execute an oath of neutrality.
2. The Arbitrator shall have no authority to award any punitive or exemplary damages; certify a class action; add any parties; vary or ignore the provisions of this Agreement; and shall be bound by governing and applicable law. The Arbitrator shall render a written opinion setting forth all material facts and the basis of his or her decision within thirty (30) days of the conclusion of the arbitration proceeding. **THE PARTIES HEREBY WAIVE ANY RIGHTS THEY MAY HAVE TO TRIAL BY JURY IN REGARD TO ARBITRAL CLAIMS.**
3. **No waiver of right to arbitration --** There shall be no waiver of the right to arbitration unless such waiver is provided affirmatively and in writing by the waiving party to the other party. There shall be no implied waiver of this right to arbitration. No acts,

including the filing of litigation, shall be construed as a waiver or a repudiation of the right to arbitrate.

4. **The First Amendment applies to arbitration proceedings** -- Any arbitration tribunal shall consider the First Amendment to the United States Constitution to be in force and effect between the parties. Both parties stipulate to the applicability of the First Amendment's protection of free speech, expression, and association, and both parties stipulate that case law interpreting the First Amendment shall be admissible and considered to be binding authority upon the Arbitrator.

20. MISCELLANEOUS PROVISIONS:

- 20.1. **Assignment.** The rights and liabilities of the parties hereto will bind and inure to the benefit of their respective assignees, successors, executors, and administrators, as the case may be.
- 20.2. **Severability.** If for any reason a court of competent jurisdiction or an arbitrator finds any provision of this Agreement, or any portion thereof, to be unenforceable, that provision will be enforced to the maximum extent permissible and the remainder of this Agreement will continue in full force and effect.
- 20.3. **Complaints – California Residents:** The Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs may be contacted at: http://www.dca.ca.gov/online_services/complaints/consumer_complaints.html.
- 20.4. **No Waiver.** No waiver or action made by Us shall be deemed a waiver of any subsequent default of the same provision of this Agreement. If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from this Agreement.
- 20.5. **Headings.** All headings are solely for the convenience of reference and shall not affect the meaning, construction or effect of this Agreement.
- 20.6. **Complete Agreement.** This Agreement constitutes the entire agreement between the parties with respect to Your access and use of the Site, Services and the Materials contained therein, and Your use of the Site and Services, and supersedes and replaces all prior understandings or agreements, written or oral, regarding such subject matter.
- 20.7. **Other Jurisdictions.** We make no representation that the Services or any of the Materials contained therein are appropriate or available for use in other locations, and access to them from territories where their content may be illegal or is otherwise

prohibited. Those who choose to access the Site and Services from such locations do so on their own initiative and are solely responsible for determining compliance with all applicable local laws.

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Nothing more follows.